

ARKANSAS SUPREME COURT

No. CR 06-475

NOT DESIGNATED FOR PUBLICATION

PATRICK TROWBRIDGE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered June 1, 2006

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
BOONE COUNTY, CR 2002-348, HON.
JOHNNY RAY PUTMAN, JUDGE]

REMANDED; WRIT OF *CERTIORARI*
ISSUED

PER CURIAM

Petitioner Patrick Trowbridge entered pleas of guilty to first-degree murder and kidnapping. The judgment and commitment order entered June 8, 2004, reflects that petitioner was sentenced to 420 months' imprisonment on the murder charge and 240 months' imprisonment on the kidnapping charge, with the sentences to be served consecutively, for a total sentence of 660 months' imprisonment in the Arkansas Department of Correction. Petitioner timely filed a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by order entered November 21, 2005. Petitioner has now tendered a partial record to this court, and brings this motion requesting belated appeal of that order.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). However, along with that right, goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered

in accordance with Ark. R. App. P.–Civ. 4 (a). The partial record before us shows no notice of appeal of the November 21, 2005, order. Petitioner now seeks to belatedly file his appeal under Ark. R. App. P.–Crim. 2 (e).

If a petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). Petitioner’s motion indicates that he informed his attorney that he desired to appeal. Although petitioner is now proceeding *pro se*, there is reference in the order denying postconviction relief that petitioner was represented by counsel during the Rule 37.1 proceedings. Petitioner offers copies of a notice of appeal, file-marked March 18, 2005, as to a March 14, 2005, order on his Rule 37.1 petition as evidence that he desired to appeal. As the Rule 37.1 order that was entered on November 21, 2005, makes reference to a hearing, it may be that the hearing was held March 14, 2005. In any event, neither this notice of appeal nor the order it references appears in the record. The notice of appeal does raise questions as to petitioner’s instruction to counsel and whether we should treat this motion as one for rule on clerk.

Under Ark. R. App. P.–Crim.16(a), once an attorney represents a defendant in a matter of postconviction relief, the attorney is obligated to continue representing the defendant until relieved by the appropriate court. *See Hammon v. State*, 347 Ark. 267, 65 S.W.3d 853 (2002). If an appellant has alleged that he instructed counsel to file an appeal, but counsel disputes that allegation, we would ordinarily remand for findings of fact by the circuit court on the issue. Because we do not know whether counsel was relieved, or whether petitioner did instruct counsel to appeal, we remand for findings on those issues by the trial court.

In addition, we direct the trial court to determine if the notice of appeal was indeed timely. If that is the case, we will treat appellant's motion as a motion for rule on clerk to lodge the record. *See Ray v. State*, 348 Ark. 304, 73 S.W.3d 594 (2002) (*per curiam*) (citing *Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*) citing *Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (*per curiam*). Under Rule 4(a), a notice of appeal filed after the circuit court announces a decision but before the entry of the order is treated as filed on the day after the order is entered, and is therefore timely. We accordingly require a determination as to whether there was a ruling from the bench that was later reduced to the order entered, and whether petitioner did, in fact, file a notice of appeal after the trial court's decision but prior to entry of the order.

We therefore direct the trial court to provide findings of fact as to whether counsel was relieved, whether petitioner instructed counsel to file an appeal after the hearing and before the thirty-day period to file notice of appeal from the date that the November 21, 2005 order was entered had expired, and if and when a decision was announced on petitioner's Rule 37.1 petition prior to entry of the order denying postconviction relief.

We further issue a writ of *certiorari* to bring up the complete record. The trial court's findings, along with a complete record of petitioner's Rule 37.1 proceedings and the proceedings on this order, are to be provided to this court within thirty days of the date of this order.

Remanded; writ of *certiorari* issued.